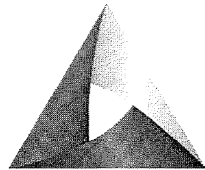


# EXHIBIT G



TRICORE  
HUMAN CAPITAL MANAGEMENT

# Harassment Training Supervisors AOP Operating Company, LLC

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Presented By  
William Potter, PHR

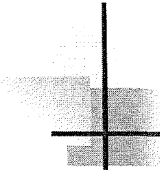
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# Objectives

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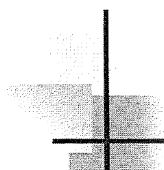
- Define Harassment
- Understand what is and what is not sexual harassment
- Understand your company's sexual harassment policy
- Know what to do if you see someone being harassed or if you are being harassed



## Supervisor/Manager Responsibilities

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- Employers are required to create and maintain a workplace that is free of visual, verbal, or physical forms of offensive material
- It is considered one of the priority jobs of a supervisor/manager to ensure that this environment exists for employees
- Management should stay alert in order to anticipate situations that could cause problems
- Management should send a strong and consistent message to every employee that harassment of any form will not be tolerated



## Supervisor/Manager Responsibilities

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- Take immediate and corrective action
- Set a positive example
- Remain objective
- Take all complaints seriously and investigate consistent with the company's policies
- Report all incidents to Human Resources immediately



## Recent or Significant Court Cases

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- Boeing – sexual discrimination - \$72.5M
- Burger King – sexual harassment – 400K
- Mitsubishi Motors – case determined that sexual harassment could be pursued as a class action lawsuit
- Babies-R-Us – same sex harassment – 205K
- Applebees – color harassment
- Lexus – race, religion, national origin harassment – 700K
- Abercrombie & Fitch – race, national origin, color, gender harassment – currently open seeking 40M
- Apollo Colors – racial harassment – 1.8M



## Objectives

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- Understand your responsibilities as a supervisor/manager
- Understand proper procedures for dealing with a harassment claim
- Employers liability for supervisors/managers
- How to prevent retaliation of employees



## New Supreme Court Decisions

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In two cases decided in June of 1998, the United States Supreme Court stated that a supervisor's harassing conduct has a particularly threatening character and that supervisors are, "clearly charged with maintaining a productive, safe work environment".





## Managerial Standard of Conduct

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One court upheld the termination of two managerial employees, stating, "an employer may expect a higher level of conduct from management personnel as opposed to non-managerial employees who also participated in the offensive behavior were terminated."

# Why be concerned about harassment?

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- Harassment in the workplace violates civil rights
- Being able to identify harassment conduct and knowing how to respond to it are important steps in protecting a positive work environment and reducing exposure to legal liability



# It's The Law !

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- **Title VII of the Civil Rights Act of 1964:**  
Prohibits employment discrimination based on race, color, religion, sex or national origin.  
Amended to include discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- **Age Discrimination in Employment Act of 1967:** Protects individuals who are 40 years of age or older.
- **Title I and Title V of the Americans with Disabilities Act of 1990:** Prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.



# Harassment Defined

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- Sexual harassment is the most common form of harassment
  
- Employers must also prevent other types of harassment such as harassment based upon
  - Disability
  - Age
  - Gender
  - National Origin
  - Race
  - Color
  - Pregnancy

# **Sexual Harassment Defined**

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- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
  - This conduct explicitly or implicitly affects an individual's employment
  - Unreasonably interferes with an individual's work performance
  - Creates an intimidating, hostile, or offensive work environment



# Harassment

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- Hostile work environment
  - Must be severe and pervasive to be actionable in court
  - The more severe, the less pervasive it need's to be
  - **But** because a few small events can add up to pervasive, you should act on all incidents
  - Even if an incident is not enough to make a case of unlawful harassment, it may violate company policy

# Two Types of Harassment

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## 1. Quid Pro Quo

- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual
- For example: manager explains to employee that, "if you do \_\_\_\_\_, then you will be promoted or you will not be terminated."
- Most often in the form of sexual harassment

## Two Types of Harassment (cont.)

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2. Hostile work environment or “environmental” harassment
  - Harassment that creates adverse working conditions but which does not result in a tangible employment action
  - Conduct must be unwelcome, related to a protected category, offensive both to the recipient and to a reasonable person and severe and pervasive





## Harassment by a Supervisor

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- Employer is automatically liable for harassment created by someone with supervisory authority over the employee
- Except employer can limit liability if:
  1. No tangible employment action; and
  2. Employer exercised reasonable care to prevent/correct harassing behavior; and
  3. Employee failed to take advantage of the employer's complaint procedures

# Forms of Sexual Harassment

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- Jokes and offensive language
- Repeated and derogatory remarks about any protected class
- Pictures, graffiti, screen savers, e-mails, & calendars
- Suggestive noises, whistling etc.
- Repeated requests for dates of sexual favors
- On-going remarks about a person's clothing, body, or personal life
- Repeated undesired physical contact, such as touching, massaging, grabbing, hugging and/or stroking



## **Things you should know about sexual harassment**

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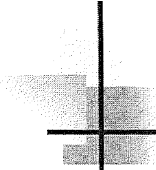
- To be harassment, the behavior must be unwanted or unwelcome
- Questionable conduct is more likely to be harassment if it is repeated
  - However, do not wait for the behavior to be repeated before you let the harasser know it is unwelcome
  - Harassers do not fit a demographic or social profile – they are all ages, races and occupations



## **Things you should know about sexual harassment**

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- May be a well respected, talented, and well liked person
- Certain behaviors would be harassment to some but not to others. One question the courts ask in determining if there is harassment is, "How would it look to a reasonable person?"
- Sexual harassment can occur between people of the same sex even though neither is sexually attracted to persons of the same sex
- Many who engage in offensive conduct stop when asked to stop



# Things you should know about sexual harassment

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- Consensual relationships require caution.
- Behaviors that may qualify as sexual harassment can range from lewd remarks or gestures to persistent, unwanted and sexual assault.

## **What is not sexual harassment?**

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- The occasional remark
- The overly sensitive employee
- Consensual relationships
- Reasonable person standard



## **Who can be harassed?**

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- Male to female or female to male
- Male to male or female to female
- Supervisor to subordinate/employee
- Co-worker to co-worker
- Non-employee to employee

# Harassment Based on Race

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- Any racial jokes
- Any racial epithets
- References to minorities a “those people” or “you people”
- References to minority neighborhoods as being “bad”





## **Avoid Suggestions of Race Harassment**

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- References to skin color
- References to racial stereotypes
- Symbols of oppression

## Harassment Based on National Origin

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- Comments about a foreign accent/problems communicating
- Comments about an employee's smell or bathing habits
- Concern about employee's immigration status or work authorization based solely on your perceptions of their national origin



## **Avoid Suggestions of National Origin Discrimination**

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- Unflattering comments about other languages or cultures
- Nickname (slang) reflecting national origin
- References to national origin stereotypes
- References to persons of a certain national (ethnic) origin by a slang term or phrase
- Jokes about illegal immigrants or work authorized status

# Harassment Based on Gender

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- Sexist jokes
- Attempts to protect or shield women (e.g., concerns about the “frailty” of a woman’s ability to handle a traditionally “male” job)
- Characterizing men as non-communicative and uncaring



## **Avoid Comments Suggesting Gender Discrimination**

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- References to female employees as “girls” (“call my girl to schedule a meeting.”)
- Comments suggesting women have or should have more responsibilities in the home
- Criticism for displaying stereotypical characteristics, such as complaining that man is too aggressive or woman overly sensitive
- Criticism for displaying non-stereotypical characteristics, such as complaining that woman is too aggressive or man is overly sensitive
- Comments about employee’s looks or appearance

# Harassment Based on Religion

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- Disrespect of employee's religious beliefs (e.g., cajoling employee to work on a religious holiday; making fun of religious practices or beliefs)
- Comments/jokes about members of certain religion
- Comments evidencing religious stereotypes
- Trying to convert employees at work



# Harassment based on Age

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- Implication that older people can't learn or change ("you can't teach an old dog new tricks")
- Alzheimer's/senility jokes ("they say the memory is the first thing to go")
- Jokes about retiring; inquiries about when an employee is going to retire
- Suggesting that the solution to the workforce demographic issue is to hire more young people
- References to age



## **Avoid Comments Suggesting Age Discrimination**

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- Comments about inflexibility or inability to change
- Comments that employee's skills are not up to date or antiquated
- Comments about employee being slow
- Comments about employee not having a future at the company (not based on performance)





## Harassment based on Disability

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- Unflattering references to disability
- Excessive concern/paternalism about employee's health/disability
- Treating disabled employees differently or condescendingly, (e.g., shouting at a blind person, not speaking directly to a person in a wheelchair)
- Teasing disabled employee about disability



# Harassment based on Bullying

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- Bullying is a form of Hostile Work Environment
- It might entail things like name calling
- Purposefully excluding people on an email chain with important company information
- It might involve spreading rumors
- Flat out ignoring someone when they ask questions
- Speaking about groups or individuals in your organization
- If you see someone engaging in workplace bullying  
**say something!**



## **Avoid Comments Suggesting Disability Discrimination**

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- Comments/jokes about employees being crazy or “nuts”
- Comments/jokes about employee being dumb or stupid
- Telling others about employee’s disability or discussing the possibility of one
- Comments/jokes about employee being fat or obese



# The Dangers of Stereotyping People

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- How many times have you heard someone refer to someone's race, religion, or ethnic background by a broad generalization? A certain group is aggressive/Pushy; another likes to drink; another is dumb; and still another has unusual physical characteristics. Now examine these statements and decide if any of them relates to a person's performance on the job. If it does not relate to job performance, the comment is an example of stereotyping and should be avoided in the workplace.



## **Harassment in the Workplace**

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- AOP Operating Company, LLC is committed to an effective No Harassment policy
- The No Harassment policy and the company's continuous improvement program depends on teamwork



# The Company's Harassment Policy

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- The company will not tolerate from any employee
  - Unwanted sexual advances
  - Unwanted visual, verbal, or physical conduct of a sexual nature which unreasonably interferes with another employees work performance, creates an intimidating, offensive or hostile environment, or otherwise adversely affects the employment opportunities for our employees
- **All employees must strive to maintain an atmosphere of mutual respect**

## Employer's Liability for Supervisors

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- Employer's are always responsible for harassment by a supervisor that culminated in a tangible employment action (hiring, firing, promotion, or demotion)
- If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that:
  - It exercised reasonable care to prevent and promptly correct any harassment
  - And
  - The employee unreasonably failed to complain to management or to avoid harm otherwise



# Responding to Harassment

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- Harassment is unlikely to stop until confronted. In some cases this may mean informing the person directly that his or her actions are offensive and unwelcome. Other situations may require an informal talk from a supervisor or a formal reprimand





# Confronting Harassment

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- Speak up at the time of the harassing conduct or soon after the incident
- Let the harasser know that their language, behavior, etc. is unwelcome or makes you feel uncomfortable
- Makes honest, direct statements of your wants and feelings
- Say, "NO" clearly, calmly and without smiling
- Your perceptions are valid. Do not be apologetic or self-blaming
- Reinforce your statements with strong, self-respecting, non-verbal behaviors



# Confronting Harassment

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- Sample approach

*"I feel very uncomfortable when you tell jokes about my religion. I would prefer that you keep our conversations professional and related to accomplishing work."*



# Reporting an Incident

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- Make sure to provide the following information:
  - Who harassed who?
  - What was the nature of the conduct?
  - When/how frequently did it occur?
  - Where did it occur?
  - How did the parties react?
  - Were there any witnesses? If so, who?
  - Has it happened to others? If so, to whom?



# How to Avoid Being Accused of Harassment

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- Familiarize yourself with the company's harassment policy and take it **Seriously.**
- Keep your hands to yourself



## **How to Avoid Being Accused of Harassment**

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- Avoid sexual and sexist comments and conduct
- When in doubt ask if you have offended someone. Apologize if you have.



## How to Avoid Being Accused of Harassment

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- If someone complains about your language or conduct, **CHANGE IT.**
- Don't condone, ignore, or assist others in sexually harassing speech and or conduct



## How to Avoid Being Accused of Harassment

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- Don't place yourself in compromising situations
- When in doubt....**DON'T**

## How to Prevent an Employee From Claiming it was Reasonable Not to Use the Complaint Procedure

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- Distribute and post harassment policy
- Provide several avenues of complaint
- Train supervisors on preventing harassment and handling complaints
- Be alert for complaints
- Always act on complaints
- Assure employees of no retaliation
- Promptly correct harassment problems





# Retaliation

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- If an employee is treated unfavorably because he/she made a discrimination claim, that is retaliation (even if absolutely no merit to original claim)
- This is hard because;
- Feelings of anger can show when a manager is accused
- Employees frequently bring frivolous claims to fend off discipline



## Retaliation

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- May not retaliate for “opposition” to discrimination
- -Threatening to bring discrimination claim or suit
- Asking about EEO rights
- Advising others about EEO rights
- Refusing to do something the employee reasonably believes is discriminatory



# Retaliation

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- Where employee has made a claim of discrimination, anything has potential to become claim of retaliation
- Handle with care

## What Happens After a Charge of Discrimination is Filed with the EEOC ?

- A charge may be assigned for priority investigation if the initial facts appear to support a violation of law
- EEOC can seek to settle a charge at any stage of the investigation of the charging party and the employer express an interest in doing so
- If investigating a charge, the EEOC may make written requests for information, interview people, review documents, and as needed , visit the facility where the alleged discrimination occurred
- When the investigation is complete, the EEOC will discuss the evidence with the charging party or employer, as appropriate
- The charge may be selected for the EEOC mediation program if both the charging party and the employer express an interest in this option
- A charge may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law

## What Remedies Are Available When Discrimination is Found?

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- Back pay
  - Hiring
  - Promotion
  - Reinstatement
  - Front pay
  - Reasonable accommodation on other actions that will make an individual whole
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- Remedies also may include payment of:
    - Attorney's fees
    - Expert witness fees
    - Court costs